

REMARKS

Claims 88, 92, 101, and 104 have been amended. Claims 97, 100, and 102 have been cancelled. Therefore, claims 88-96, 98-99, 101, and 103-115 are currently pending in this application. Support for the amendments can be found in the original disclosure, e.g. in claims 97, 100 and 102 (now cancelled) and in paragraphs [0018] and [0022] of the specification. No new matter has been added. Entry of the amendments at this time is therefore respectfully requested.

Applicant hereby elects, with traverse, Group III, claims 106-107, drawn to a method for improving the health status of a mammal employing a newborn formulation produced by the method disclosed in the present invention.

Applicant respectfully submits that the Examiner's definition of the common technical feature is broader than the method as defined in currently pending claim 88, comprising specific steps for encapsulating the bioactive material. Nevertheless, in order to further distinguish the method of the present invention from the cited prior art and expedite prosecution, claim 88 has been amended to recite that the bioactive ingredient is heat sensitive and the steps of drying and admixing all of the ingredients are performed at a temperature below 50°C, such that the bioactive ingredient substantially maintains its biological activity. As described in detail in the specification [e.g. paragraph 0018], hitherto known encapsulation processes involve high temperatures, resulting in thermal destruction or loss of biological activity of heat sensitive active ingredient. In contrast to the disclosure of the present invention, U.S. Patent No. 5,418,010 cited by the Examiner discloses a microencapsulation process involving a heating step to create a protein melt.

The restriction requirements are based on the Examiner's statement that the technical feature common to all claim groups is encapsulated bioactive ingredient in food formulation, while this technical feature does not distinguish the claims over the prior art. The Examiner cites U.S. Patent No. 5,531,989 as teaching bioactive compound in food formulation and U.S. Patent No. 5,418,010 as teaching a process of encapsulation. In view of the amendments, claim 88 does provide a common technical feature that is novel and non-obvious over the prior art. Thus,

AMENDMENT AND RESPONSE TO RESTRICTION REQUIREMENT Docket No. 15872.091
Title: "Bioactive Compounds Protection Method and Compositions Containing the Same"
U.S. Serial No. 10/561,541

Groups I-IV, all depending on claim 88, are linked together by a common technical feature that is novel and non-obvious over the prior art. Therefore, withdrawal of the Restrictions Requirements is respectfully requested.

Applicant expressly reserves the right to file one or more divisional or continuing applications to protect the inventions of the non-elected group and other disclosed, but unclaimed, subject matter prior to the issuance of this application. If there are any questions, the Examiner is invited to call Applicant's representative Rodney Fuller at (602) 916-5404 to resolve any remaining issues to expedite the prosecution of this application.

Respectfully submitted,

May 8, 2009 /Rodney J. Fuller/
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